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Supreme Court of the United States.

OCTOBER TERM, 1959.

No. 840.

EDNA M. FAUCI, *Petitioner*,

v.

UNITED STATES OF AMERICA, THE DISTRICT DIRECTOR OF INTERNAL REVENUE, BOSTON, MASSACHUSETTS DISTRICT AND EDWIN F. HANNON, JR., RECEIVER, *Respondents*.

RESPONDENT EDWIN F. HANNON'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

ARTHUR L. BROWN,
THOMAS E. GOODE,
Attorneys for Respondent
Edwin F. Hannon, Jr.
50 CONGRESS STREET,
BOSTON, MASSACHUSETTS

ADDISON C. GETCHELL & SON, INC., LAW PRINTERS, BOSTON.

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The petitioner seeks by her petition to upset the decision of the United States District Court for the District of Massachusetts, unreported, and the affirming decision of the Court of Appeals for the First Circuit, 275 F. 2d 234 (1960).

Question Presented.

Whether the petitioner is bound by a judgment of the United States District Court for the District of Massachusetts, entered on April 23, 1958, from which she failed to prosecute an appeal, resulting from an action in the nature of a bill to reach and apply brought by the United States against the petitioner and others, in which action

the petitioner was served with process, filed an answer, and was at all times represented by counsel.

Statute Involved.

26 U.S.C. Section 7403.

Statement of the Case.

This petition arises from an action by the United States to recover delinquent taxes. The case does not involve a conflict of decisions between different Courts of Appeals, nor new or doubtful questions of law, nor a conflict between the decision of the Court of Appeals and the applicable decisions of this Court or any other Court. The petition raises no matter of public interest or importance.

On June 22, 1955, the United States filed a complaint seeking to recover delinquent taxes of $156,686.88 assessed against taxpayers Charles M. Fauci Company, Inc., and Charles M. Fauci (R. 62-67). The complaint recited the assessment of deficiencies against the taxpayers, creating tax liens in favor of the United States on the taxpayers' property and rights to property (pars. 4, 8), the filing of notices of lien (pars. 6, 10), that the taxpayers had rights in certain real estate at 127, 129-131 and 139-141 Mystic Avenue, Medford, Massachusetts, and 41-43 Stanhope Street, Boston, Massachusetts (par. 15), that the United States was entitled to such properties in the right of the taxpayers (pars. 15, 16), and that during the period involved, while the taxpayers were insolvent, they conveyed property to various named defendants, among them Edna M. Fauci, without giving adequate consideration for the property (pars. 13, 14). It prayed for personal judg-

ments of $156,686.68 against the defendant taxpayers (prayers 1, 2), satisfaction by the other named defendants of the tax claims to the extent of transfers to them of the taxpayers' properties (prayer 5), and enforcement of the tax liens of the United States against the properties and rights to property of the defendant taxpayers (prayer 6). Petitioner Edna M. Fauci filed an answer[1] (R. 67-68), as did the other defendants. Following dismissal by the Court of Appeals of an appeal from an interlocutory order in the case (*United States* v. *Fauci*, 242 F. 2d 237 (1957)), a trial was had on the issue of liability, and a verdict was returned for the United States on March 12, 1957. On April 22, 1958, a trial before the District Court was had on the issue of damages. On April 23, 1958, judgment was entered, ordering, *inter alia*, that the real estate be sold and decreeing that the claim and lien of the United States to the real estate had priority over the claims of all the parties to the action (R. 2-4). The judgment was later amended, on October 1, 1958, and November 4, 1958, in cer-

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[1] Edna M. Fauci's petition for injunction (R. 4-6) alleges, in paragraph 2, that Edna M. Fauci owns the 139-141 Mystic Avenue property. Yet Edna's answer to the allegations of the original complaint on this matter was as follows:

> "15. [Complaint.] That from time to time since May 14, 1942, the defendants Frances C. Denehy . . . have each taken or received property . . . from or on behalf of defendants Charles M. Fauci Company, Inc., or Charles M. Fauci; that Charles M. Fauci, Inc., and Charles M. Fauci are now entitled to the return of such property . . . or the proceeds therefrom . . . including the following:
>
> . . . . . .
>
> "(c) A parcel of improved realty known and numbered as 139-141 Mystic Avenue, Medford, Massachusetts."
>
> "7. [Answer of Charles M. Fauci and Edna M. Fauci.] As to the allegations contained in paragraph 15 of the Complaint, the defendants admit the allegations insofar as they are correctly stated."

tain respects not here material.[2] An appeal from the judgment of April 23, 1958, to this Court was taken by Edna M. Fauci. The appeal was dismissed for want of diligent prosecution on May 11, 1959 (R. 62).

The Receiver prepared to sell the properties pursuant to paragraphs 3 and 4 of the judgment. On June 26, 1959, Edna M. Fauci moved to postpone the sale from June 27, 1959, to September 26, 1959, and her motion was granted. On September 22, 1959, Edna M. Fauci filed a petition for injunction to enjoin the sale, alleging that she owned the property at 139-141 Mystic Avenue (par. 2), that she was prepared to pay $4411.97 in satisfaction of that part of the judgment of April 23, 1958, which gave the United States judgment against her of $3185.54 with interest (pars. 7, 8), and that she would suffer undue hardship if the property were sold (par. 6) (R. 4-6). The petition was heard on September 24, 1959, at which time oral arguments were made, $4411.97 was tendered, and the petition was denied (R. 6-10). Edna M. Fauci's notice of appeal, filed October 2, 1959, in the District Court, stated that she appealed from the orders of the Court refusing the injunction prayed for, refusing the tender made, and denying the petition (R. 10).

On February 24, 1960, the Court of Appeals affirmed the order of the District Court.

Argument.

Paragraph 5 of the judgment of the District Court stated:

> "That the claim and lien of the United States with respect to the property located at 127 Mystic Avenue,

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[2] These were the only occasions when the judgment was amended.

Medford, 129-131 Mystic Avenue, Medford, 139-141 Mystic Avenue, Medford, and 41-43 Stanhope Street, Boston, has priority over the claims of all parties to this action." (R. 2.)

The District Court was required by 26 U.S.C. Sec. 7403(C) "to adjudicate all matters involved [in the action] . . . and finally determine the merits of all claims to and liens upon the property"; and it was empowered, to effectuate such adjudication, to "decree a sale of such property . . . and a distribution of the proceeds of such sale according to the findings of the Court . . ." The petitioner was represented by counsel who filed an answer in her behalf (R. 61, 67-71), and took an appeal from the judgment of the District Court. This appeal was dismissed for want of diligent prosecution on May 11, 1959. Her claim of title in the real estate in question as against the United States is res adjudicata. *Harshman* v. *Knox County*, 122 U.S. 306, 318 (1887). *Carpenter* v. *M. J. & M. & M., Consolidated*, 212 Fed. 868 (9th Cir. 1914). Both the assumption made by the petitioner in her brief that the real estate in question is hers and the question of federal tax law and constitutional law alleged to exist on the basis of the assumption of ownership cannot stand against the judgment of the District Court fixing paramount title in the United States.

Conclusion.

This case does not present any novel or substantial issues of law. The petitioner seeks to change the purport and meaning of the judgment of the United States District Court which was affirmed by the Court of Appeals, and it

is respectfully submitted that the petition fails to present a question calling for review by the Supreme Court of the United States.

Respectfully submitted,

ARTHUR L. BROWN,

THOMAS E. GOODE,

Attorneys for Respondent

EDWIN F. HANNON, JR.